

TENNESSEE ETHICS COMMISSION

Minutes of February 15, 2007

Pursuant to the call of Chairman Thomas J. Garland, the Tennessee Ethics Commission ("Commission") met on Thursday, February 15, 2007, in the auditorium of the Tennessee State Library and Archives in Nashville, Tennessee.

The following Commissioners were present:

Thomas J. Garland, Chair

R. Larry Brown

Donald J. Hall

Linda W. Knight

Dianne F. Neal

Benjamin S. Purser, Jr.

Chairman Thomas J. Garland called the meeting to order at 9:10 a.m.

Chairman Garland announced that the Commission will be presented with a website presentation and that Robert Greene, the Secretary of State's webmaster, would arrive soon.

Chairman Garland expressed his appreciation for the attendance of the other Commission members, staff, and others present.

Chairman Garland began by giving a short history of the Commission. He stated that the Commission was created by legislation passed during the special session of the General Assembly. The appointments as Commissioners were approved in June, and were charged to be operational on October 1, 2006. He stated that the Commission had to start from scratch with dedicated Commissioners and staff with tremendous support from many offices in state government, including the Secretary of State's office, the Attorney General's office, the Finance and Administration office, and legislative legal services. Chairman Garland stated that the Commission has met all requirements of the legislation. He suggested that, in addition to meeting the legislative mandates, the Commission needs to determine its procedures. He recommended the Commission should spend some time at the next few meetings discussing points of interest, as always in an open meeting. Further, he stated that there are over 60 boards and commissions listed in the Tennessee Blue Book. He suggested that each of these boards and commissions did not have a boiler plate or a blue print to follow; rather each group had to decide how to function to meet its needs. He stated that the Commission must decide its own procedures as well.

Chairman Garland discussed the issue of taking comments from attendees and stated that his fellow Commissioners have been very patient and considerate with him for permitting dialogue with persons in attendance and the Commissioners and the staff. Chairman Garland suggested that he allowed this type of dialogue to occur in the start-up phase to resolve areas of difference, although this method may not have always been effective. He announced he does not intend to take comments from the floor during the agenda at today's meeting. He recommended that the

Commission needs to decide, at a later meeting, a process to handle comments from attendees. He stated that, if it is the will of the Commission, comments could be made from the audience members after the close of the agenda today.

Next, Chairman Garland discussed postings on the Commission's website. He posed the question to the Commissioners concerning what should be posted on the web. He stated that what is required by legislation will obviously be posted, but there needs to be more discussion regarding the procedures for postings and what type of information should be included. He suggested this discussion should include the posting of drafts, such as the posting of the meeting minutes, as the December 12, 2006 meeting minutes were posted before approval. He also suggested that discussion should include the future availability of printed materials to all attendees.

Chairman Garland announced that he is extremely pleased with what has been accomplished thus far and stated that now is a time to reflect as to where we have been, where we are, and where we want to go. He again welcomed everyone and stated that the Commission members will be available after the agenda is concluded.

CHAIRMAN GARLAND RECOGNIZED BRUCE ANDROPHY FOR THE EXECUTIVE DIRECTOR'S REPORT.

Mr. Androphy announced that copies of many of the agenda items were available in the back of the room. He stated that the first item for the Commission was the approval of the December 12, 2006, Commission meeting minutes. He asked the Commissioners for any suggestions or comments to the minutes.

Chairman Garland stated that all of the Commissioners received a copy of the draft of the meeting minutes in their packets and asked for any additions or deletions.

Commissioner Purser pointed out an error on page 4 that "Chairman Brown" should be "Commissioner Brown."

Commissioner Neal had two questions for Mr. Androphy regarding the meeting minutes. First, she referred to page 2, regarding the Governor's Executive Orders and the possible requirements for duplicate disclosures. She asked for clarification as to whether there had been any follow-up on this issue with the Governor's Office. Mr. Androphy stated there is still ongoing discussion on the issue. Commissioner Neal also referred to page 3 of the meeting minutes regarding Mark Greene's comment to the Commission for possible options for the lobbyists' delivery of the manual to employers. She asked if staff had followed up on this issue. Mr. Androphy stated that the proposed rules do provide for alternative means of delivery of the manual. Commissioner Neal also requested a correction to the language of the minutes on page 9, paragraph 7, to read "The statute does not require the Commission to render advisory opinions to a lobbyist only after that lobbyist guided us to that decision."

Commissioner Purser moved for approval of the minutes with the two suggested changes. Commissioner Hall seconded the motion.

The motion was unanimously approved.

Bruce Androphy updated the Commission on the lobbyist and employer of lobbyist registrations. He announced that, as of today's date, February 15, 2006, there are 468 registered lobbyists and 574 registered employers of lobbyists and the Commission has collected \$347,250 in registration fees. He stated that new registrations are continually added and the website is updated within 24 hours of receiving the registration. He also stated that three dates have been scheduled for the mandatory ethics training for lobbyists. The dates are set for June 14, June 19, and June 27 in Nashville. Mr. Androphy suggested that the fee for the class should be reduced from the initial \$150 estimate to \$100.

Commissioner Neal voiced her concerns regarding changing the fee amount for the lobbyist ethics training course prematurely. Commissioner Purser asked Mr. Androphy if other states offer this type of training course for lobbyists. Mr. Androphy replied that he did not currently have this information.

Mr. Androphy stated that the Department of Finance and Administration did allocate \$350,000 for the amount of all fees that would be collected from lobbyists and employers of lobbyists. He opined that this amount would be surpassed next week with the annual registration fees alone, and does not include the fees to be collected for the training courses.

Commissioner Purser agreed with Commissioner Neal to keep the price of the ethics classes for the lobbyist at \$150 until the fiscal year can be assessed. Commissioner Hall had questions regarding whether the cost of the class is reasonable compared to other training courses that are offered. Mr. Androphy stated that a typical CLE two hour class is anywhere from \$100 to \$200, and, therefore, a \$150 fee would be in the ballpark of other course offerings.

Chairman Garland suggested keeping the ethics training fee at \$150 until a one year's history can be assessed to make a determination as to whether the fee should be reduced in the future. There was a consensus by the Commissioners to keep the fee set at \$150.

Commissioner Purser asked Mr. Androphy if the \$347,250 collected for registration fees represented 100% of what was due from both the lobbyists and the employers. Mr. Androphy stated that there are a couple of lobbyists that have not paid their registration fees, however; they do have 30 days to pay the fee. He estimated a balance of \$1,000 outstanding. He also estimated a total of \$375,000 for registration fees this year.

Mr. Androphy made announcements regarding the current postings on the website. He stated that the website is continually expanding and includes such postings as the Commissioner's Annual Report to the Governor and the General Assembly, examples of the gift ban that were used during the legislative training, invitations to all members of the General Assembly, and the Statement of Disclosure of Interest forms.

Mr. Androphy announced that the mandatory ethics training for the members of the General Assembly took place on January 19, 2006, and that many of the state agency ethics trainings have been scheduled for the next few months. He provided the Commissioners with the most recent schedule of trainings. Mr. Androphy stated that he hopes all the agency trainings will be completed by June of this year.

Mr. Androphy stated that the move to the SunTrust building is now complete, including the installation of the security system, photocopiers, and all computers. He stated that the office has served the staff's needs very well and he is quite pleased with the result.

Robert Greene, the Secretary of State's webmaster, joined the meeting to do a presentation of the Commission's website for the Commission members. He explained that there are two separate entities that control the website: NICUSA, which maintains the lobbyist and employer of lobbyist portals for registration, and the Secretary of State's office, which maintains the other information found on the site. He presented the website for audience viewing and went through many of the postings that are currently available.

Commissioner Purser asked if it is possible to know how many total hits there have been for the page regarding invitations for the entire General Assembly. Mr. Androphy responded that there have been 5,214 hits for the home page, 5,006 hits for the short form disclosure form for local officials page, 1,352 hits for the forms page, 1,352 hits for the lobbyist page, and 753 hits for the page with the posted flyer titled, "Ten Things Every State Employee Needs to Know About the Tennessee Ethics Commission." Mr. Greene stated that he would send a monthly update to Mr. Androphy regarding the number of hits per a particular page, including the invitations page.

Another two pages were displayed showing the Lobbyists Business Relationships Chart and the Lobbyists Immediate Family Relationships Chart. The complaint form was also displayed. Mr. Androphy stated that one of the functions of the form was to help people who read the form understand what types of activities fall under the Commission's jurisdiction. Mr. Greene stated that he does not have the ability to see the number of hits to the Lobbyist Registration Portal.

Commissioner Neal asked if the e-mails to the Commission are currently archived. Mr. Androphy responded that the e-mails are archived. She suggested that it would be interesting over the first year to observe whether the e-mail questions change in nature. Mr. Androphy stated that many of early questions related to how to use the new electronic registration system.

Commissioner Knight suggested adding a Frequently Asked Questions page to the website. She also suggested a separate Frequently Asked Questions page for answers to lobbyist registration questions. She also requested to have a posting to assist officials in filling out the Statement of Disclosure of Interest Forms.

Robert Greene concluded his presentation at 9:45 a.m.

Mr. Androphy discussed the disclosure of interest statements. He stated that the staff has processed 5,500 disclosure statements. He requested to send warning letters in March to the local

officials that have not yet filed with the Commission. He estimated that only about 300 people out of approximately 6,000 have not yet filed.

Commissioner Brown asked how much time will be given to the officials to register after the warning letters are received. Mr. Androphy stated that a time limit of 15 days would be used.

Chairman Garland asked whether the letters will be registered. Mr. Androphy stated that the warning letters would be registered.

Commissioner Neal asked for clarification if Mr. Androphy was asking the Commission to waive the section of the statute relating to the time in which the penalties are assessed. Mr. Androphy stated that he believes that the law gives the Commission the authority to determine when to assess penalties.

Commissioner Knight requested to have more information regarding the exact language of the statute for assessing civil penalties. Commissioner Hall read the pertinent language of the statute, "The Tennessee Ethics Commission may impose a civil penalty." Therefore, Commissioner Hall defined this role as permissive.

The Commissioners had no objection to allowing Mr. Androphy to send out warning letters to those local officials that have not yet filed.

Mr. Androphy stated that the statement of disclosure reports are public documents. He read the portion of the statute that requires the Commission to make these documents available for public inspection and copying. He stated that, to date, interested parties who have wanted to look at the forms have done so at the Commission's office. Mr. Androphy asked for authorization to mail or fax copies of the disclosure statements for an appropriate fee.

Commissioner Neal asked if this is the fee as stated in the rule. Lead counsel, Anne Turner, stated that the per page cost for copying is set by rule but the Commission has the discretion to set the fees for the other costs associated with the request, such as mailing costs and staff time.

Commissioner Knight suggested that staff time is a different issue than out-of-pocket expenses such as copying and mailing fees. She referred to the case, Tennessean v. Electric Power Board of Nashville, 979 S.W. 2d 297 (Tenn. 1998) and the Attorney General opinion, Tenn. Atty. Gen. 01-021 (February 8, 2001), regarding the limitation for charging a fee for personnel time.

Mr. Androphy stated that the fee issue and mailing issue will be revisited in the discussion of the rules.

Next, Mr. Androphy asked for authorization to post the information from the disclosure of interest forms from the local officials in database form on the Ethics Commission website, rather than posting each individual form.

Commissioner Knight suggested that the database should be presented in many ways for a person to search the information. She believes that the information should be posted alphabetically by county and by city. She also asked whether posting in database form complies with the statute. Commissioner Brown also had concerns whether this type of posting is in compliance with the language of the statute.

Mr. Androphy read the statute to the Commission and stated that the law does not require postings of the individual forms.

Commissioner Purser asked whether the website could currently hold 6,000 PDF files. Mr. Androphy stated that next year the information should be filed electronically and the individual forms should be available for viewing as NICUSA would have the ability to host all of the forms.

Commissioner Brown moved for authorization for the posting of the statement of disclosure of interest forms in database format for the state and local officials for this year. Commissioner Purser seconded the motion.

The motion was approved.

Mr. Androphy clarified that his future plans are for all the state and local officials to have the ability to file electronically when it is financially feasible.

Mr. Androphy also sought authorization to further develop electronic filing for the disclosure of interest statements and to roll out the next generation of the lobbyist and employer of lobbyist electronic filing.

Chairman Garland asked whether the \$5,000 discrepancy with NICUSA had been resolved. Mr. Androphy stated that the company agreed to a compromise to split the amount in half.

Commissioner Neal requested more clarification about the planning process for electronic filing. Mr. Androphy stated that the Commission will have to sign a memorandum of understanding with NICUSA so the company can provide an estimate for the work. Also, the state has to give approval for the electronic filing. He informed the Commission that there will be two different systems which will not allow any interconnectivity between the lobbyist and the employer of lobbyist registration process and the electronic filing of the disclosure forms. He also stated that these are actually listed as two separate projects with NICUSA.

All Commissioners agreed to proceed with the planning process for both the electronic filing of disclosure forms and the new electronic registration for lobbyists and employers of lobbyists.

THE COMMISSION TOOK A BRIEF RECESS AT 10:21 A.M.

CHARIMAN GARLAND RECONVENED THE MEETING AT 10:39 A.M.

DISCUSSION OF THE PUBLIC RECORDS RULES.

Mr. Androphy recognized the Commission's lead counsel, Anne Turner, for discussion of the proposed rules. She presented a draft of access to public records rules for the Tennessee Ethics Commission. She stated that the purpose of the rules is to allow for the Commission to set fees and to set some basic parameters for allowing access to records. She also stated that, under the Open Records Act, virtually everything that the Commission will be dealing with will be open records that the public has a right to gain access to, but that the Act also gives the agencies the ability to set reasonable fees and reasonable parameters. She announced that the final draft is a result of suggestions from Commissioner Knight and Commissioner Neal. Ms. Turner asked if the Commission members wanted to go through the rules step by step. Commissioner Purser agreed to this process.

Commissioner Knight asked where the language for the rules was obtained. Anne Turner responded that two sources for the drafted language were from rules that have been adopted by the Department of Children Services and the Department of Human Services. She stated that she chose these specific agencies because she had personal knowledge that these agencies' rules have been challenged and are a result of the Attorney General's review. Also, the proposed rules were taken from the Department of Transportation and the Department of Safety. She also announced that Assistant Attorney General Janet Kleinfelter did a preliminary informal review of the proposed rules.

Commissioner Neal asked whether the sections regarding redacting materials were patterned from other agencies' rules. Ms. Turner stated that these sections were also patterned after other agencies' rules that have been time tested and litigation tested. Commissioner Neal announced her concerns in areas where the staff would have discretion to redact materials. Commissioner Hall stated that he believes the proposed rule is a best attempt to provide some certainty and predictability in the area of redacting materials. Commissioner Neal suggested going through each section of the rules that discusses redacting materials to determine if the language is applicable to each area.

Commissioner Brown stated that he sees the rules as a guide for the staff to comply with the law. Commissioner Purser agreed.

Commissioner Knight reminded the Commission that it should not adopt a rule that is more limiting than the law for members of the public to be able to inspect and/or copy a document that is a public record.

Mr. Androphy stated that, if the rules are approved today, the rules would go to a public comment period before the regulations are made final.

Commissioner Neal posed a hypothetical scenario of an individual who may have their own equipment for copying documents at the Commission's office. The proposed rule states that this

type of activity is up to the discretion of the Executive Director. She believes the rule should show that there is no cost associated with the individual making copies with their own equipment.

Anne Turner clarified that one section of the rule addresses access to records, while another section addresses copying of documents, although there is similar language in both sections. She stated that, in the revised version of the rules, the sections would be separately labeled. Ms. Turner stated that currently the rule is drafted with a \$.25 charge for one-sided copies, and a \$.30 charge for two-sided copies, unless it meets the non-routine copy definition whereby the charge would be \$.50 for one-sided copies and \$.60 for two-sided copies. She stated that, in doing the research for the rules, she found the average copying charge to be \$.10 - \$.15 per page for other government agencies. However, many of these agency rules were written years before. She also stated that currently the Commission's computers do not have the software to download files from the C drive to a CD, but she stated that it would not be difficult to go through the process with the Secretary of State to get this type of software installed.

Commissioner Knight referred Ms. Turner to the case, Tennessean v. Electric Power Board of Nashville, 979 S.W. 2d 297 (Tenn. 1998) regarding charging for staff time. She proposed that this case held that state agencies may not be able to charge for the staff time and labor involved in making copies for the public. She requested more research regarding this issue.

Commissioner Brown posed a hypothetical of an individual who may make a very large request for copying in which the staff may have to hire a temporary worker to fulfill the request. He questioned whether this type of additional expense could be charged to the person making the request. There was consensus that more research should be made to see how to comply with the law.

Ms. Turner asked the Commission if a flat fee of \$.25 for photo copies in a paper form is acceptable. There was a consensus that this flat fee was appropriate.

Commissioner Neal asked whether the Commission plans to have some type of record or log of individuals who come to the office to view or copy records. Mr. Androphy stated that a log may have a possible chilling effect by putting a condition on a member of the public to view the forms.

Commissioner Brown asked Commissioner Neal what purpose a log of this type would serve; whether it is for security reasons or for some other purpose. She stated that there should be some type of protection if the visitor receives the original record. Commissioner Purser agreed that there should be some type of record to keep track of people who visit the Commission's Office.

Chairman Garland stated that more thought is needed to find a balance between the openness of the records and security of the records.

Commissioner Purser asked if a visitor would be permitted to look at the original copy. Mr. Androphy answered that the original copies would be provided to the person requesting the information.

Commissioner Hall stated that there needs to be a carefully crafted provision to the rule regarding a log-in procedure for future consideration.

Anne Turner proposed that agency policy is broader than the rules for office procedures, and suggested that items such as a log-in sheet could be addressed in the agency policy, without having to go through any rule-making process.

Commissioner Neal suggested changing the language on page 5, subset (a) to read, "The Commission may permit the individual requesting Commission records to supply the necessary equipment and supplies to make the requested copies." She wanted to add this language to allow members of the public who bring their own digital camera and portable scanner to have the ability to make copies without it being a momentary, discretionary decision of the staff.

Commissioner Brown stated that the staff should have some discretion for the use of the office space, provided the discretion is within the law. Commissioner Neal opined that unreasonable copying requests should be addressed in a separate statement of the rules.

Commissioner Purser requested for the Commission to identify the specific issues that need addressing and to allow the staff to draft another proposal of the rules for future consideration.

Commissioner Hall had concerns with the payment section for records, which only allows for payment by cashier's check or money order. He suggested that cash should also be included as a form of payment. Mr. Androphy requested more time for additional research from other government agencies regarding accepting cash.

Commissioner Hall asked about waivers of the payments. Ms. Turner responded that this issue may also be addressed in the agency policy for situations where a fee may be waived.

Commissioner Neal asked Ms. Turner about the basis for waiving a copying fee of less than \$1.00. Ms. Turner responded that this waiver was based on the concept of only accepting money orders or cashier's checks and that, if currency is to be accepted, the waiver of fees of less than \$1.00 would no longer be an issue.

Commissioner Knight suggested expanding the definition of "routine copying" to include software formats. Mr. Androphy agreed to this expansion of the definition.

Ms. Turner reviewed the list of concerns in the proposed rules:

1. Personnel costs specifically related to reproduction of documents.
2. Specific changes in the wording suggested by Commissioner Neal.

3. Concerns relating to how to resolve differences of opinion, specifically when a request for a record is denied, anticipated by Commissioner Knight.

Commissioner Hall reminded Ms. Turner to include researching the issue of a log-in for those individuals who visit the office. Ms. Turner replied that the issue of a log-in was to be addressed under the staff's policy. Mr. Androphy stated that in the interim, the staff will institute a log-in for individuals who visit the office.

CHAIRMAN GARLAND TOOK A BRIEF BREAK AT 12:27 P.M. FOR LUNCH PURPOSES.

CHARIMAN GARLAND RECONVENED THE MEETING AT 12:41 P.M.

DISCUSSION REGARDING ADVISORY OPINION NO. 07-01, RELATING TO MEMBERSHIP ORGANIZATIONS

Mr. Androphy began the discussion on the draft of Advisory Opinion No. 07-01, regarding membership organizations. He stated that the current draft is consistent with the discussion that took place at the prior Commission meeting.

Commissioner Neal suggested changing the language on the last page to make it clear that the Tennessee Education Association "TEA", not their lobbyist, requests that their local affiliates meet with legislators. She also suggested a change on the last page in the sentence that precedes the conclusion to read, "The TEA affiliates' activities are limited to meeting with their local legislators once per calendar year to influence legislation and they receive no compensation or reimbursement for this service, their activities will fall within the exception contained in T.C.A. § 3-6-307(a)."

Commissioner Neal also had a fact question regarding the "Legislative Contact Report" that the TEA utilizes. She asked if the TEA, as an organization, has a responsibility to keep records of these events, or if the document itself is the record of the event. Mr. Androphy stated that the document is not required and that it is an internal TEA document.

Commissioner Knight stated that she had sent a draft with proposed edits for format and style changes to the staff. Mr. Androphy said he had not received this draft. She confirmed that she will be re-sending the draft of the opinion that does not affect the result. Further, she agreed with Commissioner Neal's language change on the last page and agreed with the conclusion. She added that she would like to add information relating to the volunteer lobbyist provision. Mr. Androphy announced that if the Commissioners agree with the conclusion, the staff will send out another draft that incorporates Commissioner Knight's changes, and as done previously, there will be a 72-hour window for any responses. All agreed with the conclusion.

DISCUSSION OF THE GUIDING PRINCIPLES OF ETHICAL CONDUCT.

Mr. Androphy began the discussion of the Guiding Principles of Ethical Conduct. He moved to remove the definitions of administrative action, association, consulting services, influencing legislative and administrative action, and legislative action because these terms do not appear in the body of the text.

Commissioner Hall referenced T.C.A. § 3-6-106(a) in the Reform Act that states, "Duties include recommending guiding principles of ethical conduct for consideration and adoption by the legislative or executive branches." Mr. Androphy agreed this portion of the statute should be included in the Guiding Principles because the Ethics Commission is only recommending the principles for the legislative or executive branches to adopt. Commissioner Hall also had questions concerning who in the other branches of government should be contacted regarding these policies. Chairman Garland suggested speaking with the Ethics Committee Chairman of both the House and the Senate.

Commissioner Neal suggested changing the language in the first paragraph, "This Guide goes beyond the requirements of current State law," to make it clear that these are concepts or principles unrelated to actual statutory prohibitions. She was also concerned that there is a blurring of statutory language with guiding principles in the current draft. Mr. Androphy responded that the two areas of statutory language included relate to the gift prohibitions and the post-employment lobbying restrictions. He asserted that it is a judgment call for the Commission whether to include this type of language in the guiding principles.

Commissioner Brown had concerns with the section titled, "Article III, Conflicts of Interest"; he wants to add "undisclosed interest" to Section 1(1).

Commissioner Hall pointed out that another feature of the Ethics Reform Act was to allow the Ethics Commission to recommend guiding principles for lobbyists and employers of lobbyists. Mr. Androphy stated that this suggestion of guiding principle was not intended for lobbyists or employers of lobbyists. He stated other guiding principles will be provided for lobbyists and employers of lobbyists in the future.

Commissioner Knight requested changing the language to the definition of public official, subsection (p) which currently states, "Any other individual who is employed by a public official as defined in (9) (a-0) above or who is otherwise a state employee." She believes this definition is a vast expansion of who the guiding principles were designed to address.

Commissioner Neal suggested that it may be the role of the body who is deciding to adopt the principles whether or not to include these individuals in the scope of the guiding principles.

Commissioner Purser asked what is conceptually wrong with applying the ethics principles to all state employees. Commissioner Knight does not agree that the Ethics Commission was given the

privilege to provide ethics principles to all state employees, especially if the Commission is trying to set principles for the Judiciary Branch.

Commissioner Neal suggested keeping the capitalization of public officials consistent throughout the Guide. Mr. Androphy agreed.

Commissioner Hall referred to Article III, subsection 1(b). He had concerns relating to legislators who are attorneys and believes the language in this section would prevent attorneys from carrying out many of their job functions. Commissioner Knight agreed that this language is too broad. Commissioner Brown agreed that this principle is too restrictive.

There was consensus to remove the sentence.

Commissioner Hall also referred to Section II, 1(b) and 1(d), which states "...to obtain financial gain for himself or herself, his or her spouse, child, child's spouse, parent, brother or sister or a business with which he or she is associated..." He noted differences in (b) and (d) regarding the definition of "immediate family." Commissioner Knight suggested using the definition of "immediate family" as used in the Ethics Reform Act. Mr. Androphy suggested deleting the language in (b) and instead adding the language, "...to obtain financial gain for himself or herself or others...."

Commissioner Knight questioned Section II, 1(c), for those individuals that are given a subpoena to testify in court. Commissioner Brown suggested adding language, "...as required by law..." to remedy this and other problems. Mr. Androphy read the new sentence to include, "No public official, other than in the performance of official duties or as required by law...."

Mr. Androphy suggested deleting Section II, 1(e), because it is already addressed in the statute. All agreed to remove this sentence.

Commissioner Knight suggested adding language in (g) to state that the official is only influenced by the merits of the issue. Mr. Androphy pointed out the safe harbor provision for Members of the General Assembly on page 5, Section II, 1(a) of the Guide. Commissioner Brown proposed to keep (g) as drafted.

There was consensus to keep the language as drafted.

Commissioner Hall opined that the key sentence in the document is located under the "Statement of Purpose", in the last sentence of the second paragraph, which he believes bolsters Commissioner Purser's suggestion to be aspirational. The sentence reads, "It is, thus, the obligation of every public official to pursue a conduct that will not engender public concern and violate the public trust."

There was consensus to leave the second paragraph as drafted.

Commissioner Neal suggested providing the documents that were used to formulate the guiding principles to the officials of the legislative branch and the executive branch. Commissioner Knight and Commissioner Purser also asked to provide these resources.

There was a consensus to provide this information in a separate cover letter to the official.

Commissioner Knight also made a suggestion to informally communicate with the legislative leaders and the Governor's office before the Commission promulgates the Code. Chairman Garland agreed that this type of communication would be good for building relationships. Mr. Androphy asked if the next approved version by the Commission could then be presented to the officials as a draft. All agreed to this process.

Mr. Androphy stated the next two meetings will be Monday, March 19 at 9:00 a.m. and April 19 at 9:00 a.m.

CHAIRMAN GARLAND TOOK COMMENTS FROM THE AUDIENCE.

Courtney Pearre made suggestions to the Commission. He announced that the Lobbyist Association has asked and sponsors have agreed to introduce legislation to expand the lobbyist registration period until the end of the year and put it on a calendar year thereafter. Also, he stated that legislation is being introduced to have the employers certify that they have received the manual, rather than the lobbyist certifying the delivery of the manual. Mr. Pearre informed the Committee that several caption bills have been introduced, including a bill supported by the Tennessee Bar Association. He also informed the Committee that he made a document request in November that has not been responded to as of yet. Finally, he suggested having copies available well in advance of the meetings.

Allan Ramsaur spoke to the Commission. He stated the proposed rules exceed statutory authority and gives the Executive Director too much discretion. He also referenced the proposed \$.25 fee per copy. He believes this cost should not include personnel costs. He stated that there should not be any charge for copying documents. He also announced that he made a request for documents in November that has not been resolved. Further, Mr. Ramsaur suggested that the Guiding Principles need careful work.

Commissioner Hall asked Mr. Ramsaur about the bill the Tennessee Bar Association is supporting. Mr. Ramsaur stated that the bill relates to the Commission being subject to the Open Meetings and the Public Records Act. Mr. Androphy responded that the Commission was provided a copy of the proposed bill.

Chairman Garland thanked the speakers for their comments.

CHAIRMAN GARLAND CALLED FOR A SHORT BREAK AT 2:09 P.M.

CHAIRMAN GARLAND RECONVENED THE MEETING AT 2:17 P.M. FOR GENERAL DISCUSSION.

Chairman Garland suggested having time at the beginning of each meeting for the Commissioners to dialogue with one another. He also complemented his fellow Commission members, as well as the staff, for the work they have done thus far. He also stated that he would personally like to become more familiar with how the other boards and commission in the state operate.

Commissioner Purser stated that he would like to have more transparency in state government. To reach this goal, he proposed putting more information on the Commission's website, such as the agenda and all the materials, even if it is only a proposed document. Commissioner Hall agreed that the full agenda and all related documents should be available for the public, even if it is going beyond the requirements of the statute. Commissioner Neal suggested putting the documents, such as the agenda, the revised rule and the Model Code on the website at least ten days before the meeting.

Commissioner Knight had some concerns for posting the documents that go along with the agenda too soon, although she whole-heartedly agrees with the principle to be open. She does not believe the Commission has the authority to go beyond the statute. She also does not want to set a precedent that other state agencies do not currently follow because they may ultimately be accused of not being as open as the Ethics Commission. She also sees a distinction between a document that is initially known will be made public, like a draft of an advisory opinion or a rule, and a document that may never see the light of day, like her memo. Moreover, she agreed with posting a document that will evolve into a public document, but not posting a document that is just for discussion and consideration.

Commissioner Neal suggested that there is a difference between initial drafts of advisory opinions and the final draft that will be discussed at the meeting. She proposed that there may be certain documents which are distinctive, but generally speaking, items that are to be deliberated upon should be made available for the public before the meetings.

Commissioner Brown stated that he thinks it creates confusion to get too many drafts out before the meeting, although he is also in favor of the public having everything they are entitled to and more. He suggested only posting the version of the materials that are to be considered at the meeting.

Chairman Garland utilized the analogy of a company's "board book," and announced that once this board book has been established for the Commission meeting, no changes should be made to the drafts between the time the final drafts have gone out and the meeting.

Commissioner Purser stated that this method is the way the board at his company operates. He stated that this keeps everyone working on the same page. Commissioner Hall also stated that this method has worked for other commissions he has worked on in Tennessee.

Commissioner Neal asked for clarification whether a Commissioner may contact a staff member with questions regarding a final draft of a document before the next meeting. Commissioner Brown agreed that they should be given the ability to ask general questions of the staff at any time.

Commissioner Neal had an over-arching concern for the Commissioners' ability to become both informed and independent decision makers. She requested to be able to hear the opinions of both

Mr. Androphy and lead counsel, Ms. Turner, without their opinions being formed into one before she is presented with both their ideas. She believes that this will help her become a better decision maker. Chairman Garland affirmed that Anne Turner is the general counsel for the Ethics Commission, not just for Mr. Androphy.

Commissioner Purser suggested that e-mail is not the best way to communicate, especially because the Commission does not yet know each other well. Commissioner Hall agreed that calling is a better option for him, not e-mail. Chairman Garland also agreed that a phone call is a better method of communication.

Commissioner Neal suggested that there needs to be meetings at least every four to five weeks, if not more often. She believes this will help build relationships with each other and the staff. All agreed.

Commissioner Purser also suggested that this is a time for developing relationships and that it is important to gain trust in one another during this time.

Commissioner Brown agreed that e-mails are not the best means of communication for him. He stated that he will review any e-mails that are sent to him, however; he may respond with a phone call. He also agreed that it is important to trust the staff to do research and other day-by-day job functions for the Commission.

Chairman Garland stated that he is very impressed with the work Mr. Androphy and the staff has done thus far and complemented everyone on their work.

Mr. Androphy encouraged all the Commissioners to continue providing him with comments and suggestions.

CHAIRMAN GARLAND ADJOURNED THE MEETING AT 3:06 P.M.

Respectfully Submitted,

Melinda R. Arrington